

controller 200. As illustrated in Fig. 10 and described at column 19, lines 13-54, the central controller 200 authenticates the identity of the sellers and their capacity to deliver to the goods, verifies the status of the conditional purchase offer and stores the seller response in a database. The low bid seller response may then be selected to form a binding contract with the purchaser as illustrated in Fig. 11 and described at column 19, lines 61 to column 20, line 4.

Abstract of Dissertation by Wyman

The Wyman abstract describes a study to gain more information about consumers' receptivity to proactive telemarketing to test the hypothesis that a descriptive model can properly separate and classify consumers into segments of acceptance or non-acceptance of a telemarketing call based on demographics, importance of the attributes of the call, and telemarketing experience. The Abstract states that a model was developed with seven independent variables used to classify respondents into acceptance and non-acceptance groups. The model reportedly was successful at classifying 64% of the non-acceptor group and 70% of the acceptors during development and was subsequently tested with 73% success in identifying non-acceptors and 69% of acceptors.

Rejection under 35 U.S.C. § 103(a)

In item 6 on pages 3-8 of the Office Action, claims 1, 3-12 and 14 were rejected under 35 U.S.C. § 103(a) as unpatentable over Walker '207 in view of Wyman. In making this rejection, it was asserted that Walker '207 disclosed "means for registering market information about goods which the consumer desires to purchase" (claim 1, lines 5-6) at column 15, line 60 to column 16, line 45 with reference to 510-550 in Fig. 5. As discussed above, Fig. 5 describes "the process by which the buyer formulates CPO 100" (column 15, lines 60-61) where CPO is an abbreviation for "conditional purchase offer."

The present invention is directed to a method of advertising using a computer network, while Walker '207 is directed to producing binding contracts between sellers and buyers and Wyman merely describes a model for predicting whether telemarketing calls will be accepted. As discussed below, there are only a few steps in Walker '207 that are relevant to the present invention and these steps do not suggest the operations performed by the present invention as recited in the independent claims.

Since Fig. 5 describes a process, i.e., is a simplified flow chart, it can not possibly represent components of an element in an apparatus claim as required by the means-plus-function language recited in claim 1. Furthermore, the only steps illustrated in Fig. 5 that are all relevant to the function performed by the market information registering means recited in claim 1 are steps 510 and 520 which provide a description of goods. The additional steps cited by the Examiner, as well as steps 560-580 illustrated in Fig. 5, but not cited, result in a conditional purchase offer or CPO that is not part of the present invention.

In addition, it was asserted that column 13, lines 1-53 and column 19, lines 55-60 of Walker '207 disclose the "personal information acquiring means" recited at lines 9-11 of claim 1. The cited portion of column 13 describes databases maintained by central controller 200 and the cited portion of column 19 refers to an alternate embodiment in which "the seller transmits seller response 110 directly to the buyer at step 1010" (column 19, lines 55-56). This statement refers to Fig. 10, which as discussed above, describes the process of a seller responding to a conditional purchase offer (CPO) from a buyer. In this alternative embodiment, the buyer has control over whether to accept the seller's offer, while in the preferred embodiment disclosed by Walker '207, the contract is made binding by central controller 200 upon authentication of the seller and verification that the conditions of the buyer are met. Clearly, the alternative embodiment described at column 19, lines 55-60 describe the seller having access to the buyer, i.e., transmitting a response "directly to the buyer" (column 19, line 56) prior to the buyer purchasing anything. This does not meet the limitation recited in claim 1 in which a dealer is given "access to the consumer from said personal information registration means **when the market information posted at said posting means is purchased**" (claim 1, lines 10-11, emphasis added).

The Examiner acknowledged that Walker '207 does not teach the details of the personal information acquiring means recited at lines 13-19 of claim 1, but asserted that this was taught by Wyman. It is submitted that Wyman does not teach or suggest any components for performing the functions recited at lines 13-19 of claim 1. Furthermore, there is no suggestion of even performing the functions, such as "seeking approval for access by the dealer from the consumer who registered the purchased market information" (claim 1, lines 17-18). As discussed above, Wyman merely discloses that a model has been developed which has been accurate

slightly less than 75% of the time in predicting whether a telemarketing call will be accepted or not. There is no suggestion in Wyman of "seeking approval" for a dealer to contact a consumer prior to such contact. Quite the contrary, the purpose of the model developed by Wyman is to determine who to call without seeking approval first.

For the above reasons, it is submitted that a person of ordinary skill in the art would not find it obvious from Walker '207 and Wyman to produce a system which controls access to consumers by dealers in the manner recited in claim 1. Furthermore, since claims 12 and 14 recite methods for operation of an apparatus like that recited in claim 1, it is submitted that claims 12 and 14 similarly distinguish over Walker '207 and Wyman.

On pages 5-8 of the Office Action, additional comments were added citing "Official notice" that many of the limitations recited in claims 3-12 are "old and well known in the art." However, nothing in these comments suggests that the deficiencies of Walker '207 and Wyman identified above are "old and well known in the art." Therefore, regardless of whether the dependent claims add additional distinctions over the prior art, since claims 3-11 depend from claim 1, it is submitted that claims 3-11 patentably distinguish over Walker '207 in view of Wyman for the reasons discussed above. This should not be taken as agreement with the Examiner's assertion that the limitations recited in claims 3-11 are well-known or taught by Walker '207 or Wyman, only that it is unnecessary to determine whether there are additional distinctions recited in the dependent claims, given the lack of suggestion in Walker '207 and Wyman of the present invention as recited in the independent claims.

Summary

It is submitted that the prior art references cited by the Examiner do not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 1, 3-12 and 14 are in a condition suitable for allowance. Reconsideration of the claims and an early notice of allowance are earnestly solicited.

If any fee is required in connection with the filing of this Preliminary Amendment,
please charge same to our Deposit Account No. 19-3935.

Respectfully submitted,

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